REMARKS

Claims 1-3, 5-12, 14-19, 21-23, 31 and 33 are pending and under consideration. Claims 21-23 are withdrawn from consideration as being directed to non-elected inventions. In the Office Action of April 8, 2004, the Examiner made the following disposition:

A.) Rejected claims 1-3, 5-12, 14-17, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Beck et al.* in view of *Cheng* and *Kester*.

B.) Rejected claims 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Beck et al.* in view of *Cheng* and *Kester* and further in view of *Valyi*.

Applicant respectfully traverses the rejections and addresses the Examiner's disposition below:

A.) Rejection of claims 1-3, 5-12, 14-17, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Beck et al.* in view of *Cheng* and *Kester*:

Applicant respectfully disagrees with the rejection.

The claimed invention

Applicant's independent claim 1 claims a plastic molded container comprising a blow-molded bowl having an upper rim, a bottom, a central axis and a sidewall extending between the upper rim and the bottom. The blow-molded bowl is configured to resist deformation during a hot fill and to resist deformation during a retort application. The rim is configured for accepting a lid in engagement therewith. The sidewall in cross sectional profile is a smooth continuous curve between the upper rim and the bottom, and the sidewall extends radially outwardly before extending radially inwardly as the continuous sidewall extends downward between the upper rim and the bottom to provide a bulging continuous sidewall. The sidewall further has a diameter, which is perpendicular to the central axis and is larger than the height of the bowl, the height being the distance between the bottom and the upper rim. The blow-molded bowl further comprises at least three feet disposed on the bottom, the feet being co-formed with the bottom and configured to extend symmetrically along the bottom.

As described in Applicant's specification, containers that are adapted for hot-fill applications possess certain characteristics that allow the containers be merchantable after exposure to the extreme high and low temperature swings associated with hot-fill processes. Containers that are adapted for retort conditions need to have other characteristics that enable them to remain merchantable after exposure to the high pressures associated with retort

conditions. Thus, a container that can remain merchantable after a hot-fill process may not be able to remain merchantable after a retort process -- the container may not hold-up under retort pressures.

Applicant's claimed container is inventively configured to resist deformation during a hot fill application as well as to resist deformation during a retort application. The claimed bowl shape resists paneling and other deformations even during the high pressures associated with a retort process, in which items are first sealed in the container and then the container is subjected to heating and cooling. (Specification, page 7, lines 15-21).

Typical hot-fill-capable plastic containers may not be able to withstand the extreme pressures of a retort process, while typical retort-capable containers may not be able to withstand the extreme temperature swings of a hot-fill process. For example, during a retort process, the straight sidewalls of typical containers deform as heat and internal container pressure contort the typical containers, which fail to regain a merchantable shape. Typical containers that have rounded sidewalls also experience permanent deformation because their sidewalls typically flex and because they do not have Applicant's claimed sidewall geometry.

Beck in view of *Cheng* and *Kester* clearly fails to disclose or suggest Applicant's claimed container.

Beck

Referring to *Beck* Figure 3, *Beck's* container 1 is not a retortable container. *Beck* describes its container 1 as a hot-fill container, however, nowhere does *Beck* disclose or even suggest that its container 1 can be retorted. Applicant respectfully submits that *Beck's* container 1, which has straight sidewalls 2 and no flex points (and no teaching on how it can withstand a retort process), would not be merchantable after a retort process. The sidewalls 2 would irreparably contort, because *Beck* fails to provide means for accommodating the high pressures associated with retort.

Further, *Beck* fails to disclose Applicant's claimed container geometry. *Beck* discloses two container shapes. Namely, in Figure 3, *Beck's* container has straight sidewalls. And in Figure 7, *Beck's* container has a straight shoulder that meets a straight sidewall at an edge. None of *Beck's* embodiments includes feet. Thus, unlike Applicant's claim 1, *Beck* fails to disclose any of these claimed elements:

- a sidewall in cross sectional profile being a smooth continuous curve between an upper rim and an bottom (*Beck's* sidewalls are flat surfaces),

- a sidewall extending radially outwardly before extending radially inwardly as the continuous sidewall extends downward between the upper rim and the bottom to provide a bulging continuous sidewall (*Beck's* sidewalls are flat surfaces),

- a sidewall further having a diameter, the diameter being perpendicular to the central axis and being larger than the height of the bowl, the height being the distance between the bottom and the upper rim (*Beck's* container is more tall than wide), and

- the blow-molded bowl further comprising at least three feet disposed on the bottom, the feet being co-formed with the bottom and configured to extend symmetrically along the bottom (*Beck's* container has no feet).

Beck* in view of *Cheng

The Examiner combines *Beck's* container with *Cheng's* feet in an attempt to disclose or suggest Applicant's claimed container, however, Applicant respectfully submits the combination still fails to disclose or suggest claim 1. To begin with, *Cheng* is clearly not a hot-fillable or retortable container. First, *Cheng* fails to even describe that its container is suitable for hot-fill or retort applications. And second, one having skill in the art would recognize that *Cheng's* container could not withstand a hot-fill or retort application. *Cheng's* container has long straight sidewalls that would require some type of expansion component to withstand the extreme conditions of a hot-fill or retort process. *Cheng* simply does not teach such a component. *Cheng* describes that its container can withstand the pressures of a carbonated beverage, but *Cheng* fails to disclose a container that can withstand the pressures and temperature conditions of a hot-fill or retort process. As *Cheng* also fails to even teach that its container is suitable for hot-fill or retort applications, *Beck* in view of *Cheng* still fails to disclose or suggest Applicant's claimed container that is configured to resist deformation during a retort application.

Further, *Beck* discloses a wide-mouthed container, while *Cheng* discloses a typical substantially closed-topped bottle for carbonated beverages. The two containers have completely different geometries and purposes, and therefore there would have been no motivation to combine *Cheng's* feet with *Beck's* hot-fill container.

Therefore, *Beck* in view of *Cheng* still fails to disclose or suggest Applicant's claim 1.

Beck* in view of *Cheng* and *Kester

Claim 1 is allowable over *Beck* in view of *Cheng* as discussed above. *Kester* still fails to disclose or suggest a retortable container. For at least this reason, *Beck* in view of *Cheng* and *Kester* still fails to disclose or suggest Applicant's claim 1.

The Examiner combines *Kester's* continuous-curve sidewall with *Beck's* container in an attempt to teach Applicant's claimed container sidewall geometry, however, Applicant respectfully submits the combination fails to disclose or suggest Applicant's claim 1. Referring to *Kester* Figures 1-3, *Kester* discloses ornamental pitchers 10 and 12 that have open tops with pour spouts. One having skill in the art would not look to these open-topped containers with spouts, that are described in *Kester* as ornamental pitchers, as containers that are designed for the extreme hot-fill or retort conditions. Neither of *Kester's* containers 10 or 12 can accommodate a sealable lid, and therefore could not be used in a retort process that requires high pressures within the container. And *Kester* fails to even describe that its containers 10 or 12 have a flexibility, rigidity, material, or shape that can accommodate a hot-fill or retort application. Therefore, *Kester* alone fails to disclose or suggest a hot-fillable or retortable container.

As *Kester* discloses an open-topped, spouted ornamental pitcher, and *Beck* discloses a wide-mouthed, hot-fill container, the two containers have completely different geometries and purposes, and therefore there would have been no motivation to combine these containers. The Examiner argues that *Beck's* container could be reduced in height and combined with *Kester's* curvilinear sidewall, however, that would require some teaching in either reference on the required blow ratios necessary to achieve *Beck's* required hot-fill capability. That teaching is simply not even suggested in *Beck* and *Kester*, taken singly or in combination. In fact, *Beck* specifically teaches a method for making a hot-fill container with straight sides, not a method for making a hot-fill container with curvilinear sides.

Therefore, one having skill in the art would not have been motivated to combine *Beck* with *Kester* to disclose or suggest Applicant's claimed container.

Cheng also fails to provide such motivation, as *Cheng* merely relates to providing feet on a container. In any event, none of the references, taken singly or in combination, even teaches a retortable container.

Accordingly, *Beck* in view of *Cheng* and *Kester* fails to disclose or suggest claim 1.

Claims 2-3, 5-12, 14-17, 31 and 33 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

B.) Rejection of claims 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Beck et al.* in view of *Cheng* and *Kester* and further in view of *Valyi*:

Applicant respectfully disagrees with the rejection.

Applicant's independent claim 1 is allowable over *Beck* in view of *Cheng* and *Kester* as discussed above. *Valyi* still fails to disclose or suggest a container that can withstand a retort process. *Valyi* teaches a container that is similar to *Cheng's* container. *Valyi's* container has long straight sides that have no flexing component to withstand hot-fill or retort conditions. Further, for the reasons described above with respect to *Beck* and *Cheng*, there would have been no motivation to combine *Beck's* hot-fill container with *Valyi's* container. Therefore, *Beck* in view of *Cheng* and *Kester* and further in view of *Valyi* still fails to disclose or suggest claim 1.

Claims 18 and 19 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-3, 5-12, 14-19, 31 and 33 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

Dated: July 8, 2004

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